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OCT 22 2010

In re Application of	:	OFFICE OF PETITIONS
Britten, et al.	:	
Application No. 10/687,986	:	ON REQUEST FOR
Filed: October 17, 2003	:	RECONSIDERATION OF
Attorney Docket Number: PC27098	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 12, 2010. Applicants believe that they should be accorded an additional PTA of 596 days. Applicants request this correction in part on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE.**

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a

request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

Applicants point out that they should have been assessed additional delay for the abandonment of the application pursuant to 37 CFR 1.704(c)(3). The Office mailed a Restriction Requirement, setting a 30 day period for reply, on February 7, 2006. No reply having been timely received, the application became abandoned on March 10, 2006. Applicants filed a grantable petition to revive on August 17, 2006. Therefore, pursuant to 37 CFR 1.704(c)(3), 283 days of applicant delay should have been assessed (March 10, 2006 – December 17, 2006).

In addition, a review of the file reveals that Applicants should have been assessed additional delay pursuant to 37 CFR 1.704(b). As the Restriction Requirement was mailed on February 7, 2006, and Applicants did not file a reply until August 17, 2006, 102 days of delay should have been assessed under 37 CFR 1.704(b).

In view thereof, the correct determination of PTA prior to issuance is **two hundred twenty-six (226) days** (714 (417+297) days of PTO delay, reduced by 488 (102+283+33)days of Applicant delay).

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.



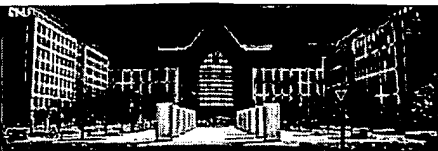
Anthony Knight
Director
Office of Petitions

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¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10687986

Search

Explanation of PTA Calculation

Explanation of PTE Calculation

PTA Calculations for Application: 10687986

Application Filing Date: 10/17/2003	Overlapping Days Between (A and B) or (A and C): 0
Issue Date of Patent:	Non-Overlapping USPTO Delays: 834
A Delays: 834	PTO Manual Adjustment: 505
B Delays: 0	Applicant Delay (APPL): 103
C Delays: 0	Total PTA (days): 226

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
97	10/20/2010		P028	Adjustment of PTA Calculation by PTO		18	0
96	10/20/2010		P028	Adjustment of PTA Calculation by PTO		487	0
85	04/14/2010		MM/ =	Mail Notice of Allowance		0	0
84	04/09/2010		IREV	Issue Revision Completed		0	0
83	04/09/2010		N/E	Notice of Allowance Data Verification Completed		0	0
82	04/09/2010		DOCK	Case Docketed to Examiner in GAU		0	0
80	03/02/2010		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	0
79	03/01/2010		EX.A	Examiner's Amendment Communication		0	0
78	03/01/2010		CNTA	Notice of Allowability		0	0
77	02/23/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)		0	0
76	01/23/2010		FWDX	Date Forwarded to Examiner		0	0
75	01/19/2010	12/17/2009	A...	Response after Non-Final Action		33	71
74	01/19/2010		XT/G	Request for Extension of Time - Granted		0	0
73	09/17/2009		ELC_RVW	Electronic Review		0	0
72	09/17/2009		EML_NTF	Email Notification		0	0
71	09/17/2009		MCTNF	Mail Non-Final Rejection		0	0
70	09/14/2009		CTNF	Non-Final Rejection		0	0
68	07/23/2009		FWDX	Date Forwarded to Examiner		0	0
66	07/23/2009		FWDX	Date Forwarded to Examiner		0	0
64	07/23/2009		ABN9	Disposal for a RCE / CPA / R129		0	0
67	07/13/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	0
65	07/13/2009		RCEX	Request for Continued Examination (RCE)		0	0
63	07/13/2009		BRCE	Workflow - Request for RCE - Begin		0	0
62	05/29/2009		EML_NTR	Email Notification		0	0
61	05/29/2009		MCTAV	Mail Advisory Action (PTOL - 303)		0	0
60	05/26/2009		CTAV	Advisory Action (PTOL-303)		0	0
59	05/21/2009		FWDX	Date Forwarded to Examiner		0	0
58	05/19/2009		A.NE	Amendment after Final Rejection		0	0
57	04/13/2009		MCTFR	Mail Final Rejection (PTOL - 326)		0	0
56	04/10/2009		CTFR	Final Rejection		0	0
55	02/04/2009		FWDX	Date Forwarded to Examiner		0	0
54	01/21/2009		A...	Response after Non-Final Action		0	0
53	10/26/2008		MCTNF	Mail Non-Final Rejection		0	0
52	10/27/2008		CTNF	Non-Final Rejection		0	0
50	08/22/2008		FWDX	Date Forwarded to Examiner		0	0
47	07/29/2008		CAD	Correspondence Address Change		0	0
51	07/10/2008		IDSC	Information Disclosure Statement considered		0	0
49	07/10/2008		A...	Response after Non-Final Action		0	0
48	07/10/2008		EIDS	Electronic Information Disclosure Statement		0	0
46	07/10/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	0
45	04/21/2008		MCTNF	Mail Non-Final Rejection		0	0
44	04/18/2008		CTNF	Non-Final Rejection		0	0
36	03/04/2008		FWDX	Date Forwarded to Examiner		0	0
35	02/28/2008		ELC	Response to Election / Restriction Filed		0	0
34	02/07/2008	12/17/2006	MCTRS	Mail Restriction Requirement		412	29
33	02/04/2008		CTRS	Requirement for Restriction / Election		0	0
28	12/10/2007		MNRAB	Mail Notice of Rescinded Abandonment		0	0
30	12/08/2007		FWDX	Date Forwarded to Examiner		0	0
27	12/08/2007		NRAB	Notice of Rescinded Abandonment in TCS		0	0
26	08/17/2007		MPTD1	Mail-Petition Decision - Dismissed		0	0
24	08/21/2006		MABN2	Mail Abandonment for Failure to Respond to Office Action		0	0
23	08/18/2006		ABN2	Aband. for Failure to Respond to O. A.		0	0
29	08/17/2006		ELC	Response to Election / Restriction Filed		0	0
25	08/17/2006		PET	Petition Entered		0	0
22	02/07/2006	12/17/2004	MCTRS	Mail Restriction Requirement		412	1
21	02/06/2006		CTRS	Requirement for Restriction / Election		0	0
20	12/28/2005		DOCK	Case Docketed to Examiner in GAU		0	0
39	09/17/2004		IDSC	Information Disclosure Statement considered		0	0
19	09/17/2004		RCAP	Reference capture on IDS		0	0
18.7	09/17/2004		MS44	Information Disclosure Statement (IDS) Filed		0	0
18	09/17/2004		WIDS	Information Disclosure Statement (IDS) Filed		0	0
38	09/15/2004		IDSC	Information Disclosure Statement considered		0	0
17	09/15/2004		RCAP	Reference capture on IDS		0	0
16.7	09/15/2004		MS44	Information Disclosure Statement (IDS) Filed		0	0
16	09/15/2004		WIDS	Information Disclosure Statement (IDS) Filed		0	0
15	08/16/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete		0	0
14	08/16/2004		DOCK	Case Docketed to Examiner in GAU		0	0
13	07/20/2004		WROIPE	Application Return from OIPE		0	0
12	07/20/2004		ROIPE	Application Return TO OIPE		0	0
11	07/20/2004		OIPE	Application Dispatched from OIPE		0	0
10	07/20/2004		COMP	Application Is Now Complete		0	0
9	06/30/2004	04/21/2004	ADDFLEE	Additional Application Filing Fees		20	5
8	06/30/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant		0	0
7	05/11/2004		ADDFLEE	Additional Application Filing Fees		0	0
5	01/21/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned		0	0
4	01/13/2004		L194	Cleared by OIPE CSR		0	0
3	01/13/2004		CLASS	CASE CLASSIFIED BY OIPE		0	0
2	11/21/2003		SCAN	IFW Scan & PACR Auto Security Review		0	0
1	10/17/2003		IEOX	Initial Exam Team nn		0	0

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